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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,712	04/02/2004	Dennis Piper	FULLN014USPT02	1186
23403 7590 02/03/2009 SHERRILL LAW OFFICES 4756 BANNING AVE SUITE 212 WHITE BEAR LAKE, MN 55110-3205				
EXAMINER WELCH, GARY L				
ART UNIT		PAPER NUMBER		
3765				
MAIL DATE		DELIVERY MODE		
02/03/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/816,712

Applicant(s)

PIPER ET AL.

Examiner

ANDREW W. SUTTON

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. In view of the Reply Brief filed on February 23, 2007, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 5-9, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Morgan (US 4,279,037).

With respect to claim 1 note the headguard of Figure 1 with the pad "protector 29",

retention element "headstrap 15" and the diametrically intersecting circumferential lines of retention defined by headstraps 15, 16. With respect to claim 5 note Figure 1 and the proximate temple location of the diametric points of intersection of the lines of retention defined by the headstraps 15, 16. With respect to claim 6 note that the line of retention defined by strap 15 would be above the occipital bone while that defined by strap 16 would be below the occipital bone as shown in Figure 1. With respect to claim 7 note the angular adjustment afforded the straps 15, 16 by the connection at slots 23 and therefore the angular adjustment of the circumferential lines of retention. With respect to claim 8 the capacity for angular adjustment noted with respect to claim 7 also allows for circumferential shifting of the diametric points of intersection as claimed. With respect to claim 9 note the headguard of Figure 1 with the pad "protector 29" and retention elements "headstraps 15,-16". With respect to claim 12 note the length adjustment means "cable 25". With respect to claim 13 note Figure 1 and the proximate temple location of the diametric points of intersection of the lines of retention defined by the headstraps 15, 16.

4. Claims 1, 6, 9 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Mattes (US 4,741,054).

With respect to claim 1 note the headguard shown in Figure 1 with the pad "headgear 12", retention element "strap 20" and the diametrically intersecting circumferential lines of retention defined by straps 20, 26. With respect to claim 6 note that the line of retention defined by strap 20 would be above the occipital bone while that defined by

strap 26 would be below the occipital bone as shown in Figure 1. With respect to claim 9 note the headguard shown in Figure 1 with the pad "headgear 12" and retention elements "straps 20, 26". With respect to claim 12 note length adjustment means 24, 28.

5. Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Wallman (US 1,638,756).

Note the headguard or "head dress" at 10, 11 protective of a wearer's hairstyle and comprising front protective piece 10, rear protective piece 11 and pivot points as at 21. the head dress as much functions to protect the wearer from a blow to the head as does the instant headguard as claimed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-4, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mattes '054 in view of Gwon (US 4,068,323).

With respect to claims 2, 3, 10 and 11 Mattes '054 does not teach the use of elastic as claimed. In Gwon note with respect to claim 2 column 3, line 21 and the elastic strap 16, with respect to claim 3 the strap 16 and with respect to claims 10 and 11 the use of elastic material in forming the straps 16, 19 (see column 3, line 21). It would have been

obvious to one of ordinary skill in the art at the time of the invention to modify the headguard of Mattes '054 by forming the straps as at 20, 26 of elastic material in the manner of Gwon to allow stretching of the straps to enhance the fit of the headguard. With respect to claim 4 note the length adjustment means as at 24, 28 of Mattes '054. Claims 14-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steffen in view of Lampe et al. '399. With respect to claims 14 and 18 Steffen shows a headguard "helmet 10" with a front protective piece 12, a rear protective piece 18, a retention element "elastic strap 22" and the front and rear protective pieces comprising a pad 50 in a pocket defined by covering 52. Steffen does not teach the use of a plurality of separate pads or specifically three separate pads in the pocket of the front or rear protective piece. Lampe et al. teach that the use of three separate pads 6 in the front pocket of a headguard. It would have been obvious to substitute the plurality of pads 6 of Lampe et al. for the single pad 50 of Steffen to achieve the advantage enhancing the ability of the front protective piece to conform by "relative shifting" to the contour of the head. With respect to claim 15 note the use of an elastic strap 22 (see column 3, line 2 of Steffen). With respect to claim 16 note the strap 22 of Steffen. With respect to claim 19 Lampe et al. additionally teach individual pockets 8 for each pad (see Figure 4). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the cover of Steffen with individual pockets for the pads to achieve the advantage of enhancing the retention of an individual pad in a position relative to the head to improve the fit of the headguard.

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steffen (US 3,171,133) in view of Lampe et al. (US 6,397,399) as applied to claim 14 above, and further in view of Mattes '054.

9. Steffen does not teach the use of adjustment means on the straps. Mattes '054 teach the use of adjustment means 24, 28 on straps 20, 26. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the straps 22, 24, 26, 28 of Steffen with the adjustment means 24, 28 of Mattes '054 to achieve the advantage of enabling length adjustment of the straps.

Response to Arguments

10. In response to applicant's arguments drawn to the rejection based on Morgan, the strap15 of Morgan is maintained to clearly possess a circumferential line of retention as broadly claimed with the lines of retention of straps 15, 16 lying in diametrically intersecting planes. Appellant's arguments drawn to the embodiment shown in Figures 8 and 9 of Morgan are of no moment as such embodiment is not being relied upon. Note also that the claims 1, 5-9, 12 and 13 do not require that the lines of retention be continuous about a circumference even though the connecting parts "ear guards 11, 12" in fact make continuous the lines of retention defined by straps 15, 16.

In response to appellant's arguments drawn to Mattes '054 and Mattes '054 in view of Gwon, the presence of the open crown in Mattes '054 is in no way seen to negate the circumferential lines of retention defined by the straps 20, 26. Note that the mere limitation of "circumferential" is not seen to require that the lines of retention "encircle" or

be "around" the head when worn (see the instant specification at paragraphs [0030] and [0031] and specifically the use of "i.e." and "encircle"). Further, clearly the straps and therefore the circumferential lines of retention intersect as shown clearly in Figure 1.

In response to appellant's arguments drawn to Wallman, Wallman is maintained to teach each structural element set forth in claim 20. In further response the instant invention may likewise be characterized as being decorative, while the device of Wallman in light of the hairpiece can also be characterized as being protective.

In response to appellant's arguments drawn to the combination of Steffen and Lampe et al. '399 and the combination of Steffen, Lampe et al. '399 and Mattes '054, the implication by appellant that one of ordinary skill in the art at the time of the invention would not expect to be successful with using multiple pieces of padding at the rear of the headguard just as taught at the front of the headguard, is not well taken. The fact that more smaller pad pieces would enable better conforming of the headguard to a user's head would be true regardless of a rearward or frontal location of the pad pieces.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW W. SUTTON whose telephone number is (571)272-6093. The examiner can normally be reached on Monday - Thursday 8:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary L. Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AWS
30 January 2009

/Gary L. Welch/
Supervisory Patent Examiner, Art Unit 3765